

Before The
COPYRIGHT ROYALTY TRIBUNAL
Washington, D.C. 20036

NPR offers the following response to certain issues raised in the Tribunal's notice of May 6, 1980. There will be no oral testimony by NPR in the rebuttal portion of Phase I.

NPR acknowledges the observation of the Tribunal that not every potential claimant within a class has chosen to participate in this proceeding either individually or represented as a joint claimant. NPR believes, however that from a legal and practical standpoint, the Tribunal has no alternative but to allocate the available funds only to those claimants actually participating.

If the Tribunal determines that a given category of claimants is entitled to a certain percentage of the total, that percentage must be distributed among the eligible claimants represented in that category even if all the potential claimants in that category have not filed claims. No sound legal basis has been advanced which would justify reducing the percentage entitlement of a given class of claimants and prorate it among others, simply because

not all of the potential claimants in that class chose to make a claim and participate in the proceeding.

NPR believes that it was entirely proper for the Tribunal to have established mandatory filing deadlines and procedures which all claimants were to meet in order to establish their eligibility to share in the funds and further to encourage participation by class in these proceedings.

REBUTTAL OF PHASE I SUBJECT MATTER

Various Phase I claims are based on fee generated formulas, however NPR feels that distant signal equivalent computations do not reflect Congressional intent to provide cable access to works used in distant signal carriage. The House Report explains the purpose of dividing cable systems into three classes based on percentage of gross receipts:

Because many smaller cable systems carry a large number of distant signals, especially those located in areas where over-the-air television service is sparse, and because smaller cable systems may be less able to shoulder the burden of copyright payments than larger systems, the Committee decided to give special considerations to cable systems with semiannual gross subscriber receipts of less than \$160,000 (\$320,000 annually).¹

The legislative intent to encourage distant signal carriage by smaller systems in no way reflects a lesser value to works accessible to those systems.

¹ H. Rept., No. 1476, 94th Congress, 2nd Session 96 (1976).

Compulsory licenses for cable systems provide access to all programming somewhat like repertory licensing. The classification of cable systems by revenue was never suggested by Congress as relevant to the royalty distribution to the claimants return for cable access to their works.

Moreover, revenues generated from basic service charges do not necessarily reflect distant signal carriage. While basic service may vary within an accounting period, system payments may not be prorated within that period. In addition, every system pays an initial rate for the privilege of retransmitting distant non-network programming. The purpose of this scheme "is to establish a basic payment whether or not a particular cable system elects to transmit distant non-network programming."²

Finally, NPR has found no legal basis to support the proposition that the method used to generate fees from aural signals are entitled to less or no royalties, simply because they are not used as a basis for calculating distant signal equivalency fees under the statute.

In conclusion, NPR bases its claims on program access afforded to cable systems rather than fee generated formulas.

² Id.

TOTAL SHARE OF 1978 NPR CABLE ROYALTY CLAIM

In response to the Tribunal's request to show the allocation among the individual eligible claimants within the total NPR joint share, NPR has devised the following formula on behalf of the National Program Service and 61 NPR member stations.

1,470 (NPR pgm hrs)	+	4,023 (sta pgm hrs)
<u>x 213 (stas brdcstg in '78)</u>		<u>x 61 (stas filing in '78)</u>
313,110 (NPR pgm hrs brdcst)		245,403 (filing stas pgm hrs)

313,110 (= 56%)
<u>245,403 (= 44%)</u>
558,513 (= 100% of pgm hrs in NPR claim)

According to 1978 CPB statistics, the average NPR station broadcast 1,470 hours of NPR programming and 4,023 hours of original station programming. Since our broader claim is based on percentage of program access to cable systems, we have devised the above formula to represent the percentage of each claimant's share. This formula will allow actual allocations to be based on the total percentage of accessible program hours produced and broadcast by each claimant who files.

Respectfully submitted,

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